before putting them on the market, and where he failed to do so he would be liable to an ultimate purchaser who was injured because of defects in the ladder. *Miller* v. *Steinfeld* (1916), 160 N. Y. Supp. 800.

In this case the charge was not one of fraud, but of negligence. The question to be determined was the degree of care and vigilance incumbent upon a manufacturer. The decision is in line with the recent case of *MacPherson* v. *Buick Motor Company,* 217 N. Y. 382, 111 N. E. 1050, Ann. Cas. 1916C 440. holding that the manufacturer of an automobile was responsible for the finished product, and was not at liberty to put that product upon the market without subjecting the component parts to ordinary and simple tests. The question of the liability of a manufacturer, packer or vendor to the ultimate purchaser, as well as to persons not in privity of contract, for injuries from defects in the article sold, has always been a vexing one. For a full discussion of this question see the note to *Tomlinson* v. *Armour & Company,* 19 L. R. A. N. S. 923, and the long list of cases there cited and reviewed, also the note to *Mazetti* v. *Armour & Company,* 48 L. R. A. (N. S.) 213. All the earlier cases on this question are considered in these notes. In the later cases, and especially in *MacPherson* v. *Buick Motor Company,* supra, and the principal case, we see an extension of the liability of a manufacturer or vendor, both as to the duty required and as to the manufactured articles to which it applies. Earlier cases limited the principle to poisons, explosives and things of like nature which in their normal operation are implements of destruction. See *McCaffrey* v. *Mossberg & G. Mfg. Co.,* 23 R. I. 381, 50 Atl. 651, 55 L. R. A. 822, 91 Am. St. Rep. 637; *Thomas* v. *Winchester,* 6 N. Y. 397, 57 Am. Dec. 455; *Davidson* v. *Nichols,* 11 Allen 514. For one early case in accord with principal case see *Schubert* v. *Clark Co.,* 49 Minn. 331. The duty to inspect is independent of contract, and the obligation arises at law. *MacPherson* v. *Buick Motor Co.,* supra. Opposed to the doctrine of the principal case is *Cadillac Motor Co.* v. *Johnson,* 221 Fed. 801, 137 C. C. A. 279, L. R. A. 1915E 287. For a summary of the earlier cases see *Huset* v. *J. I. Case Threshing Machine Co.,* 120 Fed. 865, 57 C. C. A. 237, 61 L. R. A. 303. The manufacturer will not be excused from the duty of inspection because he has bought the defective part of the finished product from a reputable manufacturer. However, the duty to inspect will vary with the nature of the thing to be inspected. *Richmond & Danville R. R. Co.* v. *Elliott,* 149 U. S. 266, 272, 13 Sup. Ct. 837, 37 L. Ed. 728; *MacPherson* v. *Buick Motor Co.* supra.

SPECIFIC PERFORMANCE—DAMAGES IN PLACE OF SPECIFIC PERFORMANCE.—The plaintiff brought an action for specific performance of a contract for the sale of land. At the time of the commencement of his action, he knew that specific performance was impossible because the defendant did not have title to the land, but his action was started in good faith and not for the purpose of evading a jury trial. *Held,* that damages should be awarded to the plaintiff in lieu of the relief sought. *McLennan* v. *Church* (Wis. 1916), 158 N. W. 73.

The principal case is quite distinct from the class of cases which allow damages as incidental relief when equitable relief is also given. *Reese* v. *Holmes,* 5 Rich. Eq. (S. C.) 531; *Garrish* v. *German Ins. Co.,* 55 N. H. 355; *Tayloe* v. *Merchants Fire Ins. Co.,* 9 How. (U. S.) 390, 13 L. Ed. 187. The weight of authority is that if the plaintiff, at the time of asking for equitable relief, knew that such relief could not be granted or knew that the facts warranted only legal relief, the court will not retain the case for the giving of damages. *Linden Inv. Co.* v. *Honstain Bros. Co.,* 221 Fed. 178, 136 C. C. A. 121; *Elliott* v. *Page,* 98 S. C. 400, 82 S. E. 620; *Farson* v. *Fogg,* 205 Ill. 326, 68 N. E. 755; *Knudtson* v. *Robinson,* 18 N. D. 12, 118 N. W. 1051. This represents the better rule in both code and common law jurisdictions and under the Federal Equity Rules of 1912. There are other cases, however, in accord with the principal case. *Knauf & Tesch Co.* v. *Elkhart &c. Co.,* 153 Wis. 306, 141 N. W. 701, 48 L. R. A. N. S. 744; *Amsler* v. *McClure,* 238 Pa. St. 409, 86 Atl. 294 (statutory). Upon principle, the weight of authority seems to be the better rule. Equity does not sit for the purpose of entertaining bills whose only object is to secure damages. This is a peculiar function of the law courts sitting with a jury. Even the various Codes of Civil Procedure, while they purport to abolish the difference between actions in law and in equity, ought not to be interpreted so as practically to abolish the trial by jury in cases in which damages only can be recovered and the controversy is clearly legal.

SPECIFIC PERFORMANCE — INADEQUACY OF CONSIDERATION. — The plaintiff's intestate agreed to sell property worth $8,000 to the defendant for $2,000. The defendant went into possession and paid the plaintiff's intestate a small portion of the purchase price monthly, a sum less than the rental value of the premises. The parties were cousins by marriage. Upon the death of the intestate, the plaintiff, as administrator, refused to accept the regular payments and brought an action in ejectment to recover possession of the premises. The defendant in a cross complaint asked for specific performance of the contract. *Held,* that this relief should be denied and that the plaintiff should succeed in his action of ejectment. *O'Hara* v. *Lynch* (Cal. 1916), 157 Pac. 608.

The decision in the principal case would seem to be clearly governed by § 3391 (1) of the CIV. CODE which provides that specific performance cannot be enforced against a party "if he has not received an adequate consideration for the contract." There are similar code provisions in Montana and South Dakota. The court held that, while the consideration of love and affection might be considered as part of the consideration, still it could not be considered as sufficient to make the total consideration adequate in this case. The overwhelming weight of authority in absence of such statutes is that inadequacy of consideration, unaccompanied by any fraud, mistake or unfairness is not ground for denying specific performance. *Coles* v. *Trecothick,* 1 Smith K. B. 233, 9 Ves. Jr. 244, 246, 7 Rev. Rep. 167, 32 Eng. Reprint 592; *Ketcham* v. *Owen,* 55 N. J. Eq. 344, 36 Atl. 1095; *Seymour* v. *Delancy,* 3 Cow. 445, 15 Am. Dec. 270. There are cases however to the contrary: